In the Supreme Court
OF THE
United States

OCTOBER TERM 1920

No. 35563

NORTH PACIFIC STEAMSHIP COMPANY,
Appellant,

vs.

WILLIAM T. SOLEY,
Appellee.

BRIEF FOR APPELLEE.

Christopher M. Bradley
HERBERT N. ELLIS,
HENRY HEIDELBERG,
Solicitors for Appellee.

In the Supreme Court
OF THE
United States

OCTOBER TERM 1920

No. 355

NORTH PACIFIC STEAMSHIP COMPANY,
Appellant,

vs.

WILLIAM T. SOLEY,
Appellee.

BRIEF FOR APPELLEE.

William T. Soley was injured on the 12th day of June, 1916, while at work as a stevedore on the steamer "Breakwater" at anchor in San Diego Bay, California.

On April 18, 1917, the Industrial Accident Commission of the State of California, duly made and gave its award in favor of William T. Soley, the only part of which award necessary for consideration by this court being as follows:

> "Now therefore, and in conformity with the foregoing findings, award is hereby made in

favor of William T. Soley, the applicant herein, of a temporary total disability indemnity, and his medical expenses, payment thereof to said applicant to be made as follows:

1. Cash in hand the sum of Two Hundred Eighty-one Dollars and twenty-five cents ($281.25), this amount being the sum of weekly payments of said disability indemnity accrued up to and including the 18th day of December, 1916, less, however, the sum of Thirty Dollars ($30.00) to be deducted therefrom and paid to Herbert B. Ellis as his attorney's fee as attorney for applicant herein.

2. The further sum of Eleven Dollars and twenty-five cents ($11.25) per week payable weekly in advance beginning with the 19th day of December, 1916, *until the termination of said disability or the further order of this commission,* the total period of payment, however, not to exceed two hundred and forty weeks. (Italics ours.)

3. Cash in hand the sum of Five Hundred and Fifteen Dollars and thirty-five cents ($515.35) for medical and hospital services rendered as follows:

Agnew Sanitarium	$149.85
Dr. E. H. Crabtree	152.00
Dr. Maynard C. Harding	203.50
Dr. L. C. Kinney, for X-ray	10.00

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA,
A. J. Pillsbury,
Will J. French,
Commissioners."

On the 18th day of December, 1917, appellant herein filed its bill in equity in the District Court of the United States in and for the Southern Division of the Northern District of the State of California asking that the Findings and Award of the

Industrial Accident Commission be declared null and void; and also asking to be relieved against a writ of execution based upon a judgment in the Superior Court of the State of California in the sum of $1325.25, which judgment was secured in accordance with the Compensation Act of the State of California, by filing in the said Superior Court the aforesaid Findings and Award of the Industrial Accident Commission, and, thereupon, and on the 12th day of November, 1917, there was issued out of the said Superior Court of the State of California, the execution herein questioned, in the sum of $1325.25 and interest in the sum of $29.20.

The only question before this court on appeal concerns the jurisdiction of the Federal Courts.

When the court, Honorable Judge Van Fleet presiding, inquired into the real facts existant, there was only one conclusion possible—that the court had no jurisdiction to further proceed because of the lack of a sufficient amount being in controversy.

Appellant failed to assert its rights under and pursuant to the Workman's Compensation Insurance and Safety Laws of the State of California, and on appeal to the Supreme Court of the State of California, it was held that appellant had no remedy because of his laches and because of the running of the Statute of Limitations of the State of California.

Appellant would have the court believe that an award against them in the sum of $3496.60 had been made by the Industrial Accident Commission, and

yet only a casual reading of the Findings and Award would show that such was not the case, but that figure represents the ultimate maximum amount which could possibly become due, providing the two contingencies mentioned in the aforesaid Findings and Award never happened, but unfortunately for appellant both contingencies had happened at the time the court was called upon to pass upon jurisdictional question of the amount.

The award shows on its face that it was to be continuous only in the event that W. T. Soley would be disabled for a period of 240 weeks or that no "further order" would be made by the Industrial Accident Commission.

As a matter of fact the liability imposed under the Findings and Award of the Industrial Accident Commission had terminated one week prior to the filing of appellant's bill in equity, to wit, on the 10th day of December, 1917.

Upon that date W. T. Soley had been discharged by his physician as cured and W. T. Soley, according to the testimony given by himself at the hearing before Judge Van Fleet in the District Court on that date (December 10, 1917), resumed his work as a stevedore, being at said time fully restored to health and vigor, and, of course, then the liability of appellant under the award of the Industrial Accident Commission had ceased, and appellant owed Soley the sum of $1370.35, and no more.

Appellant asserts that its liability was only terminable by an order of the Commission filed in the

Superior Court, and yet in its brief quotes certain sections of the Compensation Act which absolutely negative that assertion by the appellant, and which clearly show that in order to terminate an award it is only necessary that an order be made by the Industrial Accident Commission, which was done prior to the establishment of Federal Court Jurisdiction.

When the court finally had the case presented to it on August 26, 1919, it was on the bill of complaint filed by the appellant and upon the motion to dismiss, and the answer filed by W. T. Soley, in which pleadings of defendant it was alleged that the jurisdictional amount was not such as to confer jurisdiction upon the District Court.

Inasmuch as the bill of complaint made an averment that the jurisdictional amount was in excess of $3000 and the pleadings filed by defendant denied that allegation, it was, of course, the first duty of the court to take evidence as to the jurisdiction of the court.

> Penn Co. v. Bay, 138 Fed. 203;
> Bronson v. Board of Supervisors of Emmett and Kossuth Counties, 237 Fed. 212.

Even though the pleadings of appellee failed to disclose the lack of jurisdictional amount involved, the court would have been bound to inquire, on its own motion, into the question of jurisdiction.

> Empire City Fire Ins. Co. v. Amer. Cent. Ins. Co., 218 Fed. 774.

It will be noted that the Commission found, as a fact, that W. T. Soley's disability had ceased on the 10th day of December, 1917, and that there was then due him the total sum of $1370.35. This figure of $1370.35 is all that appellant could possibly have been called upon to pay, *or for which execution could be levied, and represents the total amount of money in question here,* and, therefore, of course, the jurisdictional amount required in the Federal Court is lacking.

W. T. Soley himself took the stand in the District Court and testified that he had been informed on the 10th day of December, 1917, by his physician, that he was completely cured and restored to his health, and that he then returned to work and that he never contemplated any further demand upon appellant herein.

> "After my doctor told me I was cured I went back to work on or about December 10, 1917, and have been working ever since. I have made no claim on my employer since that time." (Transcript p. 18.)

There was then introduced in evidence by appellee an order terminating disability made by the Industrial Accident Commission on the 25th day of August, 1919 (one day before the hearing in the District Court), which order was as follows:

> "This cause came on for further hearing this 25th day of August, 1919, upon the petition of applicant above named for an order fixing the duration and extent of his disability, applicant appearing in person and by Herbert N. Ellis, attorney at law, and defendant appearing

by Aitken, Glensor, Clewe & Van Dine, attorneys at law, and the cause having been submitted for decision, this Commission now find that the disability suffered by applicant by reason of his injury on the 12th day of June, 1916, as heretofore found herein terminated on the 10th day of December, 1917, and that the disability indemnity accrued and payable to him therefore to and including said 10th day of December, 1917, amounts to the sum of eight hundred fifty-five dollars ($855.00) which, together with the medical expenses heretofore awarded herein in the sum of five hundred fifteen dollars and thirty-five cents ($515.35) makes a total of one thousand three hundred seven dollars and thirty-five cents ($1307.35) as the total liability of defendant above named due applicant by reason of said injury."

(Signed and attested by the Industrial Accident Commission of the State of California.)

By clerical error the total is made to appear $1307.35; the correct total is $1370.35.

This hearing was had after notice to appellant and solicitors for appellant herein were present at said hearing.

Argument.

Appellee cannot conceive of any necessity of citing to this high court legal authorities on such a simple proposition as is presented in this appeal.

When this court is advised that appellant never was indebted to Soley in an amount in excess of $1370.35 and that appellee could never have secured execution for a greater amount, appellant's assertion

of damages in any sum in excess of that amount falls.

In view of the foregoing facts, which are not contradicted, it will be seen that the authorities cited by appellant condemn the position taken by it and support the contention of appellee, Soley.

It is admitted by appellee, that on the face of the pleadings of appellant, the court had jurisdiction, but he supports the court's contention that under all the pleadings in this case it was the first duty of the court to inquire into the *actual facts* of jurisdiction.

> An averment in a complaint as to jurisdictional amount gives prima facie jurisdiction, notwithstanding an allegation in the answer that the amount in controversy is less than the jurisdictional amount, until the defendant has sustained the burden of affirmatively showing that the requisite jurisdictional amount is wanting.
>
> Penn Co. v. Bay, 138 Fed. 203.

> An averment in a bill in equity in a federal court that the amount or value in controversy exceeds the jurisdictional amount does not give the court jurisdiction unless supported by proof, where it is put in issue, and such issue may be taken by answer.
>
> Ore. R. etc. Co. v. Shell, 125 Fed. 979; aff. 143 Fed. 1004.

> To ascertain the right to jurisdiction the court will look not to a single feature of the case, but to the entire controversy between the parties.
>
> Shappiro v. Goldberg, 192 U. S. 252; 48 L. ed. 419.

In determining this question the court will look to the whole record.

Edwards v. Bates County, 55 Fed. 436.

The words "matter in controversy" do not refer to the intention of the parties concerning them, but to the claims presented in the records to the legal consideration of the court.

Kanost v. Martin, 15 How. 198; 14 L. ed. 660.

Where a bill in equity is filed asking a decree giving mandatory or preventive relief it is the value of the property of which the defendant may be deprived by the decree sought which is the test of jurisdiction. (In this instance, $1370.35.)

Wash. Mkt. Co. v. Hoffman, 101 U. S. 112; 25 L. ed. 782;

Estes v. Cunter, 121 U. S. 183; 30 L. ed. 884.

It is not the sum demanded or claimed which controls, but the jurisdiction depends upon the amount or value which is actually in controversy between the parties.

New Mexico v. A. T. & S. F. R. Co., 201 U. S. 41;

New England Mgt. Sec Co. v. Gay, 145 U. S. 125.

If before or pending the action involved in a trial court, payment is made or the matter in controversy is partially compromised or settled, the balance left unsettled and unpaid will control the appellate jurisdiction.

Cox v. Western Land Co., 123—31 L. ed. 178;

Hassett v. Germania Bldg. Association (Iowa), 43 N. W. 275.

Where jurisdiction or right of a removal is doubtful, Federal Courts are inclined to rule against assumption of jurisdiction.

Eddy v. Chi. etc. R. Co., 226 Fed. 120.

The policy of the removing statute is to compel persons whatever their citizenship, who have small claims, to litigate them in the state court.

Baltimore etc. R. Co. v. Larill (Ohio), 93 N. W. 619.

When the court, Honorable Judge Van Fleet presiding, finally heard the case, on the 26th day of August, 1919, he ruled that all questions except that of jurisdiction were for the moment immaterial and would be disregarded. After very patiently listening to all the evidence bearing on the jurisdictional question and after hearing lengthy arguments from both sides, the case was ordered submitted and thereafter the judge rendered his opinion as set forth in the transcript to the effect that appellant's bill would be dismissed because of lack of jurisdiction, and we confidently expect that that decision will be sustained by this honorable court.

Dated, San Francisco,
October 25, 1920.

Respectfully submitted,

HERBERT N. ELLIS,
HENRY HEIDELBERG,
Solicitors for Appellee.

Christopher M. Bradley
Of counsel.